HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.W.P. No. 1187 of 2004

Date of Decision:4.5.2007

Himachal Shiksha Samiti ……. Petitioner.

versus

State of H.P. & another …….. Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? Yes.

For the petitioner : Mr. R. K. Sharma, Advocate.

For the respondents : Mr. C. B. Singh, Dy. Advocate General.

Sanjay Karol, J. (Oral)

This judgment is being dictated in open Court in presence of the learned counsel for the parties.

The present writ petition has been filed assailing the orders dated 11.11.2004 (Annexure P-9), whereby the lease granted to the petitioner vide instrument dated 4.12.2001 (Annexure P-3), is cancelled being in contravention of the provisions of H.P. Tenancy and Land Reforms Act, 1972 (hereinafter referred to as 'the Act') and H.P. Lease Rules, 1993 (hereinafter referred to as 'the Rules').

Petitioner has filed the present writ petition, inter alia stating that it is an educational society and is imparting education to the poor inhabitants of the State on 'no profit no loss' basis. The society is not charging any fee and is being managed on the donations received

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Whether reporters of local papers may be allowed to see the judgment?

from the public. The employees and teachers of the society are not full time salaried employees and are only accepting honorarium. Petitioner society has 225 schools in Himachal Pradesh and is actually fulfilling constitutional obligations by imparting education to people of weaker section of the society. Petitioner set up the school by the name of Saraswati Vidya Mandir, Bashing, Kullu in the year 1983 which over the years has been upgraded to Matriculation level. It has excellent, academic environment and students are showing the brilliant performance in the examinations conducted by the School as also the Education Board.

To meet the growing requirements of the school respondent granted to the petitioner land measuring 1.10.0 bighas. The grant was in terms of lease deed dated 22.12.2001 in the name of Principal, Saraswati Vidya Mandir, Bashing School run by Himachal Shiksha Samiti. The lease was for a period of 10 years commencing from 4th December, 2001 on annual rental of Rs.16,948/-. After taking the possession, the same has been put to use by the school and the lease money is being paid from time to time. In fact, lease amount for the period from 4th December, 2004 up to 31st December, 2005, is also paid.

Notice dated 16th August, 2004 (Annexure P8), was issued to the petitioner stating that from the scrutiny of the lease papers, it was found that the lease was granted in contravention of Section 118 of the Act and Rule 3(9) of the Rules. Petitioner was asked to show cause as to why the order of resumption / cancellation of lease be not issued. Petitioner participated in the proceedings by causing personal appearance of the Principal. Thereafter, the District Collector, Kullu, passed an order dated 11th of November, 2004 cancelling the lease deed executed in favour of the petitioner and ordering resumption of land in favour of the Government free

from all encumbrances. Liberty, however, was given to the petitioner to move an application for grant of permission under Section 118 of the Act. A direction was given to the petitioner to apply within one month.

Petitioner applied and sought permission under Section 118 of the Act, vide application dated 18.12.2004 (Annexure P10), on which apparently no action has been taken so far. The present writ petition has been filed challenging the said action of the respondents.

On 23rd December, 2004, when the matter came up for admission for the first time, the following order was passed:-

"CWP No.1187 and CMP No. 1152 of 2004

Heard learned counsel. Admit. Issue notice in the writ petition as well as in CMP No. 1152 of 2004. Service of notice is waived by Sh. D. C. Pathik, Additional Advocate General and on his instructions Mr. M. S. Chandel, Advocate General has put in appearance on behalf of the respondents. Parties to complete their pleadings.

Subject to any order that may be passed after hearing opposite side on CMP No. 1152 of 2004, in the interim it is ordered that operation of Annexure P-9 dated 11.11.2004 passed by respondent No.2 in the matter of exemption of land comprising in khasra No. 3808, 3811, 3812 and 3814, Kita 4 situated in village Phati Banogi, Kothi Sari, Tehsil and District Kullu shall remain stayed.

Annexure P-10 shows that petitioner has approached Secretary (Revenue) to the Government of Himachal Pradesh. If it is ultimately decided while dealing with Annexure P-10 that some relief needs to be granted in favour of the petitioner, pendency of this writ petition will not come in the way of authorities concerned to deal with this representation of the petitioner. Dasti copy."

The said interim order was subsequently confirmed on 10th of May, 2005.

In response to the petition, respondents filed an affidavit stating that the petitioner had not produced any record, at the time of grant of lease, with regard to its eligibility under Section 118 of the Act. Petitioner is not an agriculturist under the Act. It is further stated that the subsequent application of the petitioner filed in terms of Annexure P-10, is not in the prescribed form and also not filed before the competent authority. The fact that the petitioner is running the school and has made investments on the land by raising superstructure, is however admitted.

In the rejoinder, it is stated that the petitioner is an agriculturist holding agricultural land at various places in Himachal Pradesh and, therefore, did not require any prior permission as envisaged under Section 118 of the Act. It is further stated that the documents pertaining to the ownership of the land and status of an agriculturist, were placed before the authorities concerned prior to the grant and execution of the lease. In fact, it is only after due verification and satisfaction with regard to the petitioner's agricultural status that the lease was executed.

Mr. R. K. Sharma, learned counsel for the petitioner, apart from reiterating the averments made in the petition, has submitted ; (i) that the petitioner is an agriculturist and the entire proof and material was with the competent authority and it only after due verification that the grant was sanctioned and that the lease deed was executed and registered. All documents are also on record of the Court. In this background, action taken by the authorities, holding that the lease is in contravention of the provisions of Section 118 of the Act is wrong and illegal. (ii) that the show cause notice was issued on a limited ground and the Collector could not have determined other matters for which there was no show cause notice.

Per contra, the learned Deputy Advocate General has argued that the material placed on record was not before the authorities concerned. Consequently, the decision taken by the Collector is in accordance with law. The documents have been placed on record only in the rejoinder and have not been annexed with the petition.

I shall now deal with the submissions made by the counsels.

Section 118 of the Act provides that no transfer of land by way of lease or creation of tenancy shall be valid in favour of a person, who is not an agriculturist. It further provides that no Registrar appointed under the Indian Registration Act, 1908 shall register any documents in contravention of Sub Section (1) of Section 118 of the Act.

Sub Section (1), (2)(i) & 3 are reproduced as under:

"118. Transfer of land to non-agriculturists barred: –

(1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, but save as otherwise provided in this Chapter, no transfer of land (including sales in execution of a decree of a civil Court or for recovery of arrears of land revenue), by way of sale, gift, exchange, lease, mortgage with possession or creation of a tenancy shall be valid in favour of a person who is not an agriculturist.

(2) (i) a non-agriculturist with the permission of State Government for the purpose that may be prescribed.

Provided that a person who is a non-agriculturist but purchases land with the permission of the State Government under clause (i) of this sub section shall, irrespective of such permission, continue to be a non-agriculturist for the purposes of this Act.

Provided further that a non-agriculturist in whose case permission to purchase land is granted by the State Government, shall put the land to such used for which the permission has been granted, within a period of two years

or a further such period, not exceeding one year, as may be granted by the State Govt. to be counted from the day on which the deed covering the sale of the land is registered and if he fails to do so, the land so purchased by him shall vest in the State Govt. free from all encumbrances."

(3) No Registrar or the Sub-Registrar appointed under the Indian Registration Act, 1908 shall register any document pertaining to a transfer of land, which is in contravention to sub-section (1) and such transfer shall be void abinitio and the land involved in such transfer, if made in contravention of sub-section (1)."

Rule 3 (9) and Rule 10 of the Rules is as under:-

3. Grant of land on lease:- (9) Notwithstanding anything contained in this rules, no land should be leased out in contravention of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 in favour of person who is not an agriculturist within the meaning of Sub Section (2) of Section 2 of the said Act.

10. General procedure in case of individual applications for leases:- The application in Form-A for lease shall be made to the Collector of the District (hereinafter called the Collector). The Collector shall subject in every case to the provisions of Rule 3 shall deal with the application.

While passing the order of resumption, the Collector has held that the petitioner has not raised any construction over the 'thin strip' of land over which according to him no development can take place. He has further held that the building on the remaining portion of the land has been constructed beyond a period of one year. According to him, this in itself is in clear contraventions of the terms and conditions of the lease. Admittedly, the show cause notice is restricted only with regard to the violation of the

provisions of Section 118 of the Act and Rules 3(9) of the Rules. In my view, the Collector ought to have complied with the basic canons of principles of natural justice and rule of law by issuing a show cause notice and giving an opportunity of hearing to the petitioner. In the absence of the same, the order dated 11.11.2004 is liable to be quashed and is done so accordingly.

The Collector has further held that the petitioner had neither applied nor obtained any permission under the Act from the State Government, therefore, the order dated 4.12.2001 granting lease of land to the petitioner, is in contravention of the Act and the Rules.

Perusal of the lease deed would show that the same has been executed pursuant to the letter dated 11.12.2001 of the Deputy Commissioner, Kullu and that the lease is for the purposes of construction of Saraswati Vidya School building and play ground. The lease deed is in the name of Principal, Saraswati Vidya Mandir, Bashing school run by the Himachal Shiksha Samiti registered. The petitioner has placed on record the certificate issued by the revenue authorities to show that the petitioner is in cultivable possession and ownership of agricultural land and, therefore, falls within the definition of an agriculturist in terms of the Act. Perusal of Annexures P11, P13, P14 & P15 shows the ownership and possession of the petitioner of agricultural land. These documents (Jamabandies) are from1991-92 onwards i.e. much before the grant of lease. The petitioner is an agriculturist having an agricultural status and would fall within the definition of agriculturist as contemplated under the Act.

In terms of form A as prescribed under Rule 10, a declaration is to be given to the effect that the applicant is an agriculturist of Himachal Pradesh. The particulars of the land already held by the applicant are

required to be furnished. Perusal of all the provisions of the Act and Rules make it abundantly clear that the execution of deed and registration thereof could not have been carried out in absence of due compliance of the provisions of the law. It is not the case of the respondents that the lease has been registered by fraud, misrepresentation or suppression. It is also not the case of the respondents that action has been taken against the erring employee(s) for having wrongly sanctioned, executed or registered the lease deed. There is presumption of official acts done in accordance with law.

I, therefore, see no reason to disbelieve the petitioner that the documents with regard to the petitioner's eligibility were already on record, and were considered by the authorities concerned prior to the sanction, execution and registration of the lease.

The petitioners are thus agriculturist under the Act and are not in violation of the provisions of Section 118(1) of the Act or Rule 3 Sub Section (9). Therefore, considering the entire material placed on record, I am of the view that the order dated 11th of November, 2004 requires to be quashed and set aside. It is ordered accordingly.

The writ petition is accordingly allowed.

(Sanjay Karol)
Judge.

May 4, 2007.
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